

BELLSOUTH

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January 13, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, D.C. 20554

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JAN 13 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Written Ex Parte in:

CC Docket No. 97-208, CC Docket No. 97-231,

CC Docket No. 97-124, CC Docket No. 97-137,

And CC Docket No. 96-98

Dear Ms. Salas:

This is to inform you that BellSouth Corporation has responded today in a written ex parte to questions posed at a recent meeting of Common Carrier Bureau staff and representatives of BellSouth Corporation. That ex parte meeting, for which notice was filed with you on January 12, 1998, was in the above referenced proceedings.

Pursuant to Section 1.1206(a)(1) of the Commission's rules, we are filing two copies of this notice and that written ex parte presentation. Please associate this notification with the above-referenced proceedings.

Sincerely,



Kathleen B. Levitz
Vice-President - Federal Regulatory

Attachment

cc: Carol Matthey

Kathleen B. Levitz
Vice President-Federal Regulatory

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January 13, 1998

Ms. Carol Matthey
Acting Chief
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: Written Ex Parte in CC Docket No. 97-208, CC Docket No. 97-231, CC
Docket No. 97-124, CC Docket No. 97-137 and CC Docket No. 96-98

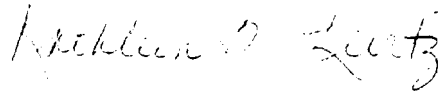
Dear Ms. Matthey:

On Friday, January 9, 1998, representatives of BellSouth met with you and your staff to discuss issues relating to the Section 271 checklist requirements. At that time your staff asked the BellSouth representatives for additional information on BellSouth processes and procedures relating to: (1) providing competitive local exchange carriers access to BellSouth signaling and databases and (2) providing access to and maintenance of poles, ducts and conduits. With respect to BellSouth's processes and procedures access to directory assistance and operator services, your staff also asked for information relating frequency of directory listing errors, treatment of unlisted numbers, and the timing of AIN deployment in the BellSouth region.

We have gathered the information that we believe is responsive to your staff's requests. That information is attached. If after reviewing this attachment your staff concludes that it needs additional or different information related to these topics, please call me at (202) 463-4113.

In compliance with Section 1.1206(a)(1) of the Commission's rules, we have today filed with the Secretary of the Commission two copies of this written ex parte presentation and requested that it be associated with each of the proceedings referenced above.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kathleen B. Levitz".

Kathleen B. Levitz
Vice President - Federal Regulatory

RESPONSES TO FCC QUESTIONS RAISED AT JANUARY 9, 1998 MEETING

Signaling and Database

1. How does the CLEC arrange for access to BellSouth's signaling network and call related databases? What is the ordering process?

The signaling link between the CLEC's switch and BellSouth's Signal Transfer Point (STP) is considered a complex unbundled network element. The CLEC would contact its account team representative who would order and arrange the setup for the CLEC. Access to BellSouth's signaling network (that is, the STP) would in turn give access to BellSouth's call related databases.

2. Can the CLEC access databases remotely?

Yes, the CLEC can access databases remotely. The CLEC has dial-up capability to the Advanced Intelligent Network (AIN) Service Creation Environment (SCE) in order to build its AIN application remotely.

3. Has any CLEC developed an AIN feature that would be run via BellSouth's AIN and thus on BellSouth's switches?

No. Presentations have been made to several CLECs, however, to date, no CLEC has developed such a feature.

4. Does BellSouth allow a CLEC's AIN Service Control Point (SCP) to interact with BellSouth's signaling network and thus send TCAP messages to BellSouth's switches?

Yes, BellSouth will allow access between the CLEC's database SCP and BellSouth's signaling network when BellSouth receives a request from a carrier and the appropriate mediation devices are in place as ordered by the state commission. Mediation devices are required for network security reasons.

Poles, Ducts and Conduits

1. How is maintenance handled? Description of fees and timing. Who has access to poles to do maintenance?

The CLEC or its hired agent or contractor is responsible for its own maintenance and any work required with respect to facilities attached to or placed in BellSouth's conduit, duct space, or pole attachments. BellSouth has no maintenance obligations for the CLEC's facilities attached to or placed in BellSouth's poles, conduits, ducts, etc.

There is an annual rental fee in the contract. No rental fee is charged to the CLEC until it makes an attachment to the pole. When the CLEC actually attaches to poles or places facilities in conduits or ducts, the CLEC is billed at the next billing period. For the time between the attachment and the billing period the customer's fee is prorated. However, the CLEC pays for all the expenses for "make-ready" work incurred to accommodate them when the work is identified. Make-ready work refers to all work performed to prepare BellSouth's conduit systems, poles or anchors and related facilities for the requested occupancy or attachment of the CLEC's facilities. This work includes such activities as clearing obstructions, rearrangement and the transfer, replacement or removal of existing facilities on a pole or in a conduit system to accommodate the CLEC's facilities and not to meet BellSouth's business needs. "Make-ready work" may include repair, enlargement or modification of BellSouth's facilities to make the pole, anchor, conduit or duct usable for the placement of the CLEC's facilities.

2. Provide a timeline from negotiation to access - steps ordered according to time - how long does it take for CLEC to attach to pole and when do they pay?

The timeline from negotiation of an agreement for access to poles, ducts and conduits to the time when the CLEC has actual access to poles, ducts and conduits varies depending on the CLEC's request and the work that is required to meet the CLEC's request. Once the CLEC signs the agreement, it becomes the CLEC's responsibility to request the records and information for a specific geographic area, determine where to make attachments, and submit the license application with the proposed construction schedule. Once the CLEC has submitted the appropriate forms and identified the records it needs, BellSouth will make the records available to the CLEC within five business days at the appropriate record maintenance center or will mail the information directly to the CLEC within twenty business days. In addition, after the CLEC submits its application to BellSouth, BellSouth field personnel will inspect the facilities to determine whether "make-ready" work is required. Once this determination is made, BellSouth will send a form to the CLEC identifying the "make-ready" work necessary and the cost of that work. If the CLEC agrees to pay BellSouth for this work, BellSouth will follow its normal construction load cycle which is a thirty day interval.

In addition to any "make-ready" work BellSouth may be required to perform, other parties who may have facilities in the conduit in question or attached to the poles, as the case may be, may likewise be required to perform "make-ready" work. To the extent parties other than BellSouth are required to perform "make-ready" work, the schedule for completing the work will be dependent, in part, on those parties completing their work. The time entailed in the entire make-ready process is dependent upon the complexity of the work and the number of parties involved. Once the "make-ready" work is completed, the CLEC will be notified that it may begin placing or attaching its facilities.

3. Please provide the operational guidelines (or whatever BellSouth provides to CLECs) for processing a request and providing access to poles, etc. When is this information given to the CLEC?

A copy of the license agreement and the operational guidelines are attached. The operational guidelines information is mailed to the CLEC after the parties execute the contract for access to poles, ducts and conduits.

Directory Assistance and Operator Services

1. Time line for the deployment schedule in our states for selective routing AIN solution. Selective routing is also referred to as customized routing.

Testing has begun in Georgia for selective routing using AIN. This solution will be deployed in Louisiana by the end of 1998 as required by the Louisiana Public Service Commission. Deployment in the other states will depend upon the results of the testing.

2. In what format can BellSouth provide Directory Assistance Database System (DADS) information?

Database information may be provided in magnetic tape, cartridge tape, and the network data mover (NDM) formats.

3. Does database indicate if a customer is not listed? For example, would the message say "Joe Smith - not listed at customer's request" when Joe Smith has asked not to be listed?

No. If the name is nonpublished, the database would give the name and an indicator NP for nonpublished. If the customer requested nonlist - the name would not appear in the telephone directory but information is in the database and any directory assistance operator can provide the information.

4. Provide information on handling of directory listing problems and on the source of faults (publisher, CLEC or BS). What problems result from CLECs sending in information incorrectly?

BellSouth Advertising & Publishing Corporation (BAPCO) publishes 510 different directory titles. From the latest report dated October 1996 - September 1997, the white page accuracy rate was 99.99929%. There have been 468 claims of errors which resulted in 138 true errors. The 138 errors resulted from a base of 19,359,685 directory listings. The primary errors are omissions and misspellings.

As for CLEC listings, there have been claims of two white page errors and 45 yellow page errors. (Some of these claimed errors are billing related.). BAPCO is currently in the process of determining the cause of these errors. If BAPCO made the error, BAPCO will fix the error and ensure that directory assistance has the correct information. If the CLEC made the error, BAPCO will provide feedback to the CLEC to assist the CLEC in reissuing the order correctly. In addition, a quarterly release is provided to the CLECs which includes instructional information on the typical errors most CLECS are making.

ATTACHMENT I

LICENSE AGREEMENT

for

RIGHTS OF WAY (ROW), CONDUITS, AND POLE ATTACHMENTS

Dated: _____, _____

Between

BELLSOUTH TELECOMMUNICATIONS, INC.
(Licensor)

And

«Licensee»

(Licensee)

Licensee desires to conduct business in the following area(s):

☐ AL ☐ KY ☐ LA ☐ MS ☐ TN ☐ FL ☐ GA ☐ NC ☐ SC

or

☐ **BellSouth Region**

BELLSOUTH License Agreement Number - _____

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RIGHTS OF WAY (ROW), CONDUITS AND POLE ATTACHMENTS

This Agreement sets forth the terms and conditions under which BellSouth shall afford to Licensee access to BellSouth's poles, ducts, conduits and rights-of-way, pursuant to the Act.

1. DEFINITIONS

Definitions in General. Except as the context otherwise requires, the terms defined in this Section shall, as used herein, have the meanings set forth in 1.1 through 1.29.

- 1.1 Anchor. The term "anchor" refers to a device, structure, or assembly which stabilizes a pole and holds it in place. An anchor assembly may consist of a rod and fixed object or plate, typically embedded in the ground, which is attached to a guy strand or guy wire, which, in turn, is attached to the pole. The term "anchor" does not include the guy strand which connects the anchor to the pole and includes only those anchors which are owned by BellSouth, as distinguished from anchors which are owned and controlled by other persons or entities.
- 1.2 Anchor/guy strand. The term "anchor/guy strand" refers to supporting wires, typically stranded together, or other devices attached to a pole and connecting that pole to an anchor or to another pole for the purpose of increasing pole stability. The term "anchor/guy strand" includes, but is not limited to, strands sometimes referred to as "anchor strands," "down guys," "guy strands," and "pole-to-pole guys."
- 1.3 Communications Act of 1934. The terms "Communications Act of 1934" and "Communications Act" refer to the Communications Act of June 19, 1934, 48 Stat. 1064, as amended, including the provisions codified as 47 U.S.C. Sections 151 et seq. The Communications Act includes the Pole Attachment Act of 1978, as defined in 1.23 following.
- 1.4 Assigned. The term "assigned", when used with respect to conduit or duct space or pole attachment space, refers to any space in such conduit or duct or on such pole that is occupied by a telecommunications service provider or a municipal or other governmental authority. To ensure the judicious use of poles and conduits, space "assigned" to a telecommunications service provider must be physically occupied by the service provider, be it BellSouth or a new entrant, within twelve (12) months of the space being "assigned".
- 1.5 Available. The term "available", when used with respect to conduit or duct space or pole attachment space, refers to any usable space in such conduit or duct or on such pole not assigned to a specific provider at the applicable time.
- 1.6 Conduit occupancy. The terms "conduit occupancy" and "occupancy" refer to the presence of wire, cable, optical conductors, or other facilities within any portion of BellSouth's conduit system.

- 1.7 **Conduit system.** The term "conduit system" refers to any combination of ducts, conduits, manholes, and handholes joined to form an integrated whole. In this Agreement, the term refers to conduit systems owned or controlled by BellSouth.
- 1.8 **Cost.** The term "cost" as used herein refers to charges made by BellSouth to Licensee for specific work performed, and shall be (a) the actual charges made by subcontractors to BellSouth for work and/or, (b) if the work was performed by BellSouth employees, the rates set forth in the Price Schedule of the General Terms and Conditions of BellSouth.
- 1.9 **Duct.** The term "duct" refers to a single enclosed tube, pipe, or channel for enclosing and carrying cables, wires, and other facilities. As used in this Agreement, the term "duct" includes "inner ducts" created by subdividing a duct into smaller channels.
- 1.10 **Facilities.** The terms "facility" and "facilities" refer to any property or equipment utilized in the provision of telecommunication services.
- 1.11 The acronym "FCC" refers to the Federal Communications Commission.
- 1.12 **Inner-Duct.** The term "inner-duct" refers to a pathway created by subdividing a duct into smaller channels.
- 1.13 **Joint User.** The term "joint user" refers to a utility which has entered into an agreement with BellSouth providing reciprocal rights of attachment of facilities owned by each party to the poles, ducts, conduits and rights-of-way owned by the other party.
- 1.14 **Licensee.** The term "licensee" refers to a person or entity which has entered or may enter into an agreement or arrangement with BellSouth permitting such person or entity to place its facilities in BellSouth's conduit system or attach its facilities to BellSouth's poles or anchors.
- 1.15 **Lashing.** The term "lashing" refers to the attachment of a licensee's sheath or inner-duct to a supporting strand.
- 1.16 **License.** The term "license" refers to any license issued pursuant to this Agreement and may, if the context requires, refer to conduit occupancy or pole attachment licenses issued by BellSouth prior to the date of this Agreement.

- 1.17 **Make-Ready work.** The term "make-ready work" refers to all work performed or to be performed to prepare BellSouth's conduit systems, poles or anchors and related facilities for the requested occupancy or attachment of Licensee's facilities. "Make-Ready work" includes, but is not limited to, clearing obstructions (e.g., by "rodding" ducts to ensure clear passage), the rearrangement, transfer, replacement, and removal of existing facilities on a pole or in a conduit system where such work is required solely to accommodate Licensee's facilities and not to meet BellSouth's business needs or convenience. "Make-Ready work" may require "dig-ups" of existing facilities and may include the repair, enlargement or modification of BellSouth's facilities (including, but not limited to, conduits, ducts, handholes and manholes) or the performance of other work required to make a pole, anchor, conduit or duct usable for the initial placement of Licensee's facilities.
- 1.18 **Manhole.** The term "manhole" refers to an enclosure, usually below ground level and entered through a hole on the surface covered with a cast iron or concrete manhole cover, which personnel may enter and use for the purpose of installing, operating, and maintaining facilities in a conduit.
- 1.19 **Occupancy.** The term "occupancy" shall refer to the physical presence of telecommunication facilities in a duct, on a pole, or within a Right-of-way.
- 1.20 **Person acting on Licensee's behalf.** The terms "person acting on Licensee's behalf," "personnel performing work on Licensee's behalf," and similar terms include both natural persons and firms and ventures of every type, including, but not limited to, corporations, partnerships, limited liability companies, sole proprietorships, and joint ventures. The terms "person acting on Licensee's behalf," "personnel performing work on Licensee's behalf," and similar terms specifically include, but are not limited to, Licensee, its officers, directors, employees, agents, representatives, attorneys, contractors, subcontractors, and other persons or entities performing services at the request of or as directed by Licensee and their respective officers, directors, employees, agents, and representatives.
- 1.21 **Person acting on BellSouth's behalf.** The terms "person acting on BellSouth's behalf," "personnel performing work on BellSouth's behalf," and similar terms include both natural persons and firms and ventures of every type, including but not limited to corporations, partnerships, limited liability companies, sole proprietorships, and joint ventures. The terms "person acting on BellSouth's behalf," "personnel performing work on BellSouth's behalf," and similar terms specifically include, but are not limited to, BellSouth, its officers, directors, employees, agents, representatives, attorneys, contractors, subcontractors, and other persons or entities performing services at the request or on behalf of BellSouth and their respective officers, directors, employees, agents, and representatives.

- 1.22 **Pole.** The term "pole" refers to both utility poles and anchors but only to those utility poles and anchors owned or controlled by BellSouth, and does not include utility poles or anchors with respect to which BellSouth has no legal authority to permit attachments by other persons or entities.
- 1.23 **Pole Attachment Act.** The terms "Pole Attachment Act" and "Pole Attachment Act of 1978" refer to those provisions of the Communications Act of 1934, as amended, now codified as 47 U.S.C. § 224.
- 1.24 **Prelicense survey.** The term "prelicense survey" refers to all work and activities performed or to be performed to determine whether there is adequate capacity on a pole or in a conduit or conduit system (including manholes and handholes) to accommodate Licensee's facilities and to determine what make-ready work, if any, is required to prepare the pole, conduit or conduit system to accommodate Licensee's facilities.
- 1.25 **Right of Way (ROW).** The term "right of way" refers to the right to use the land or other property of another party to place poles, conduits, cables, other structures and equipment, or to provide passage to access such structures and equipment. A Right of Way may run under, on, or above public or private property (including air space above public or private property) and may include the right to use discrete space in buildings, building complexes, or other locations.
- 1.26 **Sheath.** The term "sheath" refers to a single outer covering containing communications wires, fibers, or other communications media.
- 1.27 **Spare Capacity.** The term "spare capacity" refers to any pole attachment space, conduit, duct or inner-duct not currently assigned or subject to a pending application for attachment/occupancy. Spare capacity does not include an inner-duct (not to exceed one inner-duct per party) reserved by BellSouth, Licensee, or a third party for maintenance, repair, or emergency restoration.
- 1.28 **State.** When capitalized, the term "State" (as used in terms such as "this State") refers to the State of Georgia.
- 1.29 **Third Party.** The terms "third party" and "third parties" refer to persons and entities other than Licensee and BellSouth. Use of the term "third party" does not signify that any such person or entity is a party to this Agreement or has any contractual rights hereunder.

2. SCOPE OF AGREEMENT

- 2.1 Undertaking of BellSouth.** BellSouth shall provide Licensee with equal and nondiscriminatory access to pole space, conduits, ducts, and rights-of-way on terms and conditions equal to those provided by BellSouth to itself or to any other telecommunications service provider. Further, BellSouth shall not withhold or delay assignment of such facilities to Licensee because of the potential or forecasted needs of itself or other parties.
- 2.2 Attachments and Occupancies Authorized by this Agreement.** BellSouth shall issue one or more licenses to Licensee authorizing Licensee to attach facilities to BellSouth's owned or controlled poles and to place facilities within BellSouth's owned or controlled conduits, ducts or rights-of-way under the terms and conditions set forth in this Section and the Telecommunications Act of 1996.
- 2.2.1** Unless otherwise provided herein, authority to attach facilities to BellSouth's owned or controlled poles, to place facilities within BellSouth's owned or controlled conduits, ducts or rights-of-way shall be granted only in individual licenses granted under this Agreement and the placement or use of such facilities shall be determined in accordance with such licenses and procedures established in this Agreement.
- 2.2.2** Licensee agrees that its attachment of facilities to BellSouth's owned or controlled poles, occupancy of BellSouth's owned or controlled conduits, ducts or rights-of-way shall take place pursuant to the licensing procedures set forth herein, and BellSouth agrees that it shall not unreasonably withhold or delay issuance of such licenses.
- 2.3 Licenses.** Subject to the terms and conditions set forth in this Agreement, BellSouth shall issue to Licensee one or more licenses authorizing Licensee to place or attach facilities in or to specified poles, conduits, ducts or rights-of-way owned or controlled by BellSouth located within this state on a first come, first served basis. BellSouth may deny a license application if BellSouth determines that the pole, conduit or duct space specifically requested by Licensee is necessary to meet BellSouth's present needs, or is licensed by BellSouth to another licensee, or is otherwise unavailable based on engineering concerns. BellSouth shall provide written notice to Licensee within a reasonable time specifying in detail the reasons for denying Licensee's request. BellSouth shall have the right to designate the particular duct(s) to be occupied, the location and manner in which Licensee's facilities will enter and exit BellSouth's conduit system and the specific location and manner of installation for any associated equipment which is permitted by BellSouth to occupy the conduit system.

- 2.4** **Access and Use of Rights-of-Way.** BellSouth acknowledges that it is required by the Telecommunications Act of 1996 to afford Licensee access to and use of all associated rights-of-way to any sites where BellSouth's owned or controlled poles, manholes, conduits, ducts or other parts of BellSouth's owned or controlled conduit systems are located.
- 2.4.1** BellSouth shall provide Licensee with access to and use of such rights-of-way to the same extent and for the same purposes that BellSouth may access or use such rights-of-way, including but not limited to access for ingress, egress or other access and to construct, utilize, maintain, modify, and remove facilities for which pole attachment, conduit occupancy, or ROW use licenses have been issued, provided that any agreement with a third party under which BellSouth holds such rights expressly or impliedly grants BellSouth the right to provide such rights to others.
- 2.4.2** Where BellSouth notifies Licensee that BellSouth's agreement with a third party does not expressly or impliedly grant BellSouth the ability to provide such access and use rights to others, upon Licensee's request, BellSouth will use its best efforts to obtain the owner's consent and to otherwise secure such rights for Licensee. Licensee agrees to reimburse BellSouth for the reasonable and demonstrable costs incurred by BellSouth in obtaining such rights for Licensee.
- 2.4.3** In cases where a third party agreement does not grant BellSouth the right to provide access and use rights to others as contemplated in 2.4.1 and BellSouth, despite its best efforts, is unable to secure such access and use rights for Licensee in accordance with 2.4.2, or, in the case where Licensee elects not to invoke its rights under 2.4.1 or 2.4.2, Licensee shall be responsible for obtaining such permission to access and use such rights-of-way. BellSouth shall cooperate with Licensee in obtaining such permission and shall not prevent or delay any third party assignment of ROW's to Licensee.
- 2.4.4** Where BellSouth has any ownership or rights-of-way to buildings or building complexes, or within buildings or building complexes, BellSouth shall offer to Licensee through a license or other attachment:
- 2.4.4.1** The right to use any available space owned or controlled by BellSouth in the building or building complex to install Licensee equipment and facilities; and
- 2.4.4.2** Ingress and egress to such space.
- 2.4.5** Except to the extent necessary to meet the requirements of the Telecommunications Act of 1996, neither this Agreement nor any license granted hereunder shall constitute a conveyance or assignment of any of either party's rights to use any public or private rights-of-way, and nothing contained in this Agreement or in any license granted hereunder shall be construed as conferring on one party any right to interfere with the other party's access to any such public or private rights-of-way.

- 2.5 **No Effect on BellSouth's Right to Convey Property.** Nothing contained in this Agreement or in any license issued hereunder shall in any way affect the right of BellSouth to convey to any other person or entity any interest in real or personal property, including any poles, conduit or ducts to or in which Licensee has attached or placed facilities pursuant to licenses issued under this Agreement provided however that BellSouth shall give Licensee reasonable advance written notice of such intent to convey.
- 2.6 **No Effect on BellSouth's Rights to Manage its Own Facilities.** This Agreement shall not be construed as limiting or interfering with BellSouth's rights set forth below, except to the extent expressly provided by the provisions of this Agreement or licenses issued hereunder or by the Telecommunications Act of 1996 or other applicable laws, rules or regulations:
- 2.6.1 To locate, relocate, move, replace, modify, maintain, and operate BellSouth's own facilities within BellSouth's conduits, ducts or rights-of way or any of BellSouth's facilities attached to BellSouth's poles at any time and in any reasonable manner which BellSouth deems appropriate to serve its customers, avail itself of new business opportunities, or otherwise meet its business needs; or
- 2.6.2 To enter into new agreements or arrangements with other persons or entities permitting them to attach or place their facilities to or in BellSouth's poles, conduits or ducts; provided, however, that such relocations, moves, replacements, modifications, maintenance and operations or new agreements or arrangements shall not substantially interfere with Licensee's pole attachment, conduit occupancy or ROW use, rights provided by licenses Issued pursuant to this Agreement.
- 2.7 **No Effect on Licensee's Rights to Manage its Own Facilities.** This Agreement shall not be construed as limiting or interfering with Licensee's rights set forth below, except to the extent expressly provided by the provisions of this Agreement or licenses issued hereunder or by the Telecommunications Act of 1996 or other applicable laws, rules or regulations:
- 2.7.1 To locate, relocate, move, replace, modify, maintain, and operate its own facilities within BellSouth's conduits, ducts or rights-of-way or its facilities attached to BellSouth's poles at any time and in any reasonable manner which Licensee deems appropriate to serve its customers, avail itself of new business opportunities, or otherwise meet its business needs; or
- 2.7.2 To enter into new agreements or arrangements with other persons or entities permitting Licensee to attach or place its facilities to or in such other persons' or entities' poles, conduits or ducts, or rights-of-way; provided, however, that such relocations, moves, replacements, modifications, maintenance and operations or new agreements or arrangements shall not conflict with Licensee's obligations under licenses issued pursuant to this Agreement.

- 2.8 No Right to Interfere with Facilities of Others. The provisions of this Agreement or any license issued hereunder shall not be construed as authorizing either party to this Agreement to rearrange or interfere in any way with any of the other party's facilities, with the facilities of other persons or entities, or with the use of or access to such facilities by such other party or such other persons or entities, except to the extent expressly provided by the provisions of this Agreement or any license issued hereunder or by the Telecommunications Act of 1996 or other applicable laws, rules or regulations.
- 2.8.1 Licensee acknowledges that the facilities of persons or entities other than BellSouth and Licensee may be attached to or occupy BellSouth's poles, conduits, ducts and rights-of-way.
- 2.8.2 BellSouth shall not attach, or give permission to any third parties to attach facilities to, existing Licensee facilities without Licensee's prior written consent. If BellSouth becomes aware of any such unauthorized attachment to Licensee facilities, BellSouth shall use its best efforts to rectify the situation as soon as practicable.
- 2.8.3 With respect to facilities occupied by Licensee or the subject of an application for attachment by Licensee, BellSouth will give to Licensee 60 days' written notice for conduit extensions or reinforcements, 60 days' written notice for pole line extensions, 60 days' written notice for pole replacements, and 60 days' written notice of BellSouth's intention to construct, reconstruct, expand or place such facilities or of BellSouth's intention not to maintain or use any existing facility and, in the case of an existing facility which BellSouth elects not to maintain or use, BellSouth will grant to Licensee a right to maintain and use such facility. If an emergency or provisions of an applicable joint use agreement require BellSouth to construct, reconstruct, expand or replace poles, conduits or ducts occupied by Licensee or the subject of an application for attachment by Licensee, BellSouth will notify Licensee as soon as reasonably practicable of such proposed construction, reconstruction, expansion or replacement to enable Licensee, if it so desires, to request that a pole, conduit or duct of greater height or capacity be utilized to accommodate an anticipated facility need of Licensee.
- 2.8.4 At Licensee's expense, BellSouth shall remove any retired cable from conduit systems to allow for the efficient use of conduit space within a reasonable period of time.
- 2.9 Assignment of Space. Assignment of space on poles, in conduits or ducts and within ROW's will be made pursuant to licenses granted by BellSouth on an equal basis to BellSouth, Licensee and other telecommunication service providers.

3. REQUIREMENTS AND SPECIFICATIONS

- 3.1 Published Standards Incorporated in this Section by Reference.** Licensee agrees that its facilities shall be placed, constructed, maintained, repaired, and removed in accordance with current (as of the date when such work is performed) editions of the following publications, each of which is incorporated by reference as part of this Section :
- 3.1.1** The Blue Book Manual of Construction Procedures, Special Report SR-TAP-001421, published by Bell Communications Research, Inc. ("BellCore"), and sometimes referred to as the "Blue Book";
- 3.1.2** The National Electrical Code (NEC); and
- 3.1.3** The National Electrical Safety Code (NESC).
- 3.2 Changes in Published Standards.** Licensee agrees to rearrange its facilities in accordance with changes in the standards published in the publications specified in Article 3.1 of this Agreement if required by law to do so or upon the mutual agreement of the parties.
- 3.3 Additional Electrical Design Specifications.** Licensee agrees that, in addition to specifications and requirements referred to in Article 3.1 above, Licensee's facilities placed in BellSouth's conduit system shall meet all of the following electrical design specifications:
- 3.3.1** No facility shall be placed in BellSouth's conduit system in violation of FCC regulations.
- 3.3.2** Licensee's facilities placed in BellSouth's conduit system shall not be designed to use the earth as the sole conductor for any part of Licensee's circuits.
- 3.3.3** Licensee's facilities carrying more than 50 volts AC (rms) to ground or 135 volts DC to ground shall be enclosed in an effectively grounded sheath or shield.
- 3.3.4** No coaxial cable of Licensee shall occupy a conduit system containing BellSouth's cable unless such cable of Licensee meets the voltage limitations of Article 820 of the National Electrical Code.
- 3.3.5** Licensee's coaxial cable may carry continuous DC voltages up to 1800 volts to ground where the conductor current will not exceed one-half amperes and where such cable has two separate grounded metal sheaths or shields and a suitable insulating jacket over the outer sheath or shield. The power supply shall be so designed and maintained that the total current carried over the outer sheath shall not exceed 200 micro amperes under normal conditions. Conditions which would increase the current over this level shall be cleared promptly.
- 3.3.6** Neither party shall circumvent the other party's corrosion mitigation measures. Each party's new facilities shall be compatible with the other party's facilities so as not to damage any facilities of the other party by corrosion or other chemical reaction.

- 3.4 Additional Physical Design Specifications. Licensee's facilities placed in BellSouth's conduit system must meet all of the following physical design specifications:
- 3.4.1 Cables bound or wrapped with cloth or having any kind of fibrous coverings or impregnated with an adhesive material shall not be placed in BellSouth's conduit or ducts.
- 3.4.2 The integrity of BellSouth's conduit system and overall safety of BellSouth's personnel and other personnel working in BellSouth's conduit system requires that "dielectric cable" be required when Licensee's cable facility utilizes an alternative duct or route that is shared in the same trench by any current carrying facility of a power utility.
- 3.4.3 New construction splices in Licensee's fiber optic and twisted pair cables shall be located in manholes, pull boxes or handholes.
- 3.5 Additional Specifications Applicable to Connections. The following specifications apply to connections of Licensee's conduit to BellSouth's conduit system:
- 3.5.1 Licensee will be permitted to connect its conduit or duct only at the point of a BellSouth manhole. No attachment will be made by entering or breaking into conduit between manholes. All necessary work to install Licensee facilities will be performed by Licensee or its contractor at Licensee's expense. In no event shall Licensee or its contractor "core bore" or make any other modification to BellSouth manhole(s) without the prior written approval of BellSouth, which approval will not be unreasonably delayed or withheld.
- 3.5.2 BellSouth may monitor, at Licensee's expense, the entrance and exit of Licensee's facilities into BellSouth's manholes and the placement of Licensee's facilities in BellSouth's manholes.
- 3.5.3 If Licensee constructs or utilizes a duct connected to BellSouth's manhole, the duct and all connections between that duct and BellSouth's manhole shall be sealed, to the extent practicable, to prevent the entry of gases or liquids into BellSouth's conduit system. If Licensee's duct enters a building, it shall also be sealed where it enters the building and at all other locations necessary to prevent the entry of gases and liquids from the building into BellSouth's conduit system.

- 3.6 Requirements Relating to Personnel, Equipment, Material, and Construction Procedures Generally.** Duct clearing, rodding or modifications required to grant Licensee access to BellSouth's conduit systems may be performed by BellSouth at Licensee's expense at charges which represent BellSouth's actual costs. Alternatively (at Licensee's option) such work may be performed by a contractor who demonstrates compliance with BellSouth certification requirements, which certification requirements shall be consistent with F.C.C. rules. The parties acknowledge that Licensee, its contractors, and other persons acting on Licensee's behalf will perform work for Licensee (e.g., splicing Licensee's facilities) within BellSouth's conduit system. Licensee represents and warrants that neither Licensee nor any person acting on Licensee's behalf shall permit any person to climb or work on or in any of BellSouth's poles or to enter BellSouth's manholes or work within BellSouth's conduit system unless such person has the training, skill, and experience required to recognize potentially dangerous conditions relating to pole or the conduit systems and to perform the work safely.
- 3.6.1** Licensee's facilities within BellSouth's conduit system shall be constructed, placed, rearranged, modified, and removed upon receipt of license specified in 5.1. However, no such license will be required for the inspection, maintenance, repair or non-physical modifications of Licensee's facilities.
- 3.6.2** "Rodding" or clearing of ducts in BellSouth's conduit system shall be done only when specific authorization for such work has been obtained in advance from BellSouth, which authorization shall not be unreasonably delayed or withheld by BellSouth. The parties agree that such rodding or clearing shall be performed according to existing industry standards and practices. Licensee may contract with BellSouth for performance of such work or (at Licensee's option) with a contractor who demonstrates compliance with BellSouth certification requirements.
- 3.6.3** Personnel performing work on BellSouth's or Licensee's behalf in BellSouth's conduit system shall not climb on, step on, or otherwise disturb the other party's or any third party's cables, air pipes, equipment, or other facilities located in any manhole or other part of BellSouth's conduit system.
- 3.6.4** Personnel performing work on BellSouth's or Licensee's behalf within BellSouth's conduit system (including any manhole) shall, upon completing their work, make reasonable efforts to remove all tools, unused materials, wire clippings, cable sheathing and other materials brought by them to the work site.
- 3.6.5** All of Licensee's facilities shall be firmly secured and supported in accordance with BellCore and industry standards.
- 3.6.6** Licensee's facilities shall be plainly identified with Licensee's name in each manhole with a firmly affixed permanent tag that meets standards set by BellSouth for its own facilities.

- 3.6.7 Manhole pumping and purging required in order to allow Licensee's work operations to proceed shall be performed by Licensee or its contractor in compliance with BellSouth Practice Sec. 620-145-011BT, "Manhole Contaminants, Water, Sediment or Debris Removal and Reporting Procedures," and any amendments, revisions or supplements thereto and in compliance with all regulations and standards established by the United States Environmental Protection Agency and by any applicable state or local environmental regulators.
- 3.6.8 Planks or other types of platforms shall not be installed using cables, pipes or other equipment as a means of support. Platforms shall be supported only by cable racks.
- 3.6.9 Any leak detection liquid or device used by Licensee or personnel performing work on Licensee's facilities within BellSouth's conduit system shall be of a type approved by BellSouth or BellCore.
- 3.6.10 When Licensee or personnel performing work on Licensee's behalf are working within or in the vicinity of any part of BellSouth's poles or conduit system which is located within, under, over, or adjacent to streets, highways, alleys or other traveled rights-of-way, Licensee and all personnel performing work on Licensee's behalf shall follow procedures which Licensee deems appropriate for the protection of persons and property. Licensee shall be responsible, at all times, for determining and implementing the specific steps required to protect persons and property at the site. Licensee will provide all traffic control and warning devices required to protect pedestrian and vehicular traffic, workers and property from danger. Licensee has sole responsibility for the safety of all personnel performing work on Licensee's behalf, for the safety of bystanders, and for insuring that all operations conform to current OSHA regulations and all other governmental rules, ordinances or statutes. BellSouth reserves the right to suspend Licensee's activities on, in or in the vicinity of BellSouth's poles or conduit system if, in BellSouth's reasonable judgment, any hazardous condition arises due to the activity (including both acts and omissions) of Licensee or any personnel performing work on Licensee's behalf, which suspension shall cease when the condition has been rectified.
- 3.6.11 Except for protective screens, no temporary cover shall be placed by Licensee or personnel performing work on Licensee's behalf over an open manhole unless it is at least four feet above the surface level of the manhole opening.
- 3.6.12 Smoking or the use of any open flame is prohibited in BellSouth's manholes, in any other portion of BellSouth's conduit system, or within 10 feet of any open manhole entrance; provided that this provision will not prohibit the use of spark producing tools such as electric drills, fusion splicers, etc.
- 3.6.13 Artificial lighting, when required, will be provided by Licensee. Only explosion-proof lighting fixtures shall be used.

- 3.6.14 Neither Licensee nor personnel performing work on Licensee's behalf shall allow any combustible gas, vapor, liquid, or material to accumulate in BellSouth's conduit system (including any manhole) during work operations performed within or in the vicinity of BellSouth's conduit system.
- 3.6.15 Licensee will abide by any laws, regulations or ordinances regarding the use of spark producing tools, equipment or devices in BellSouth's manholes, in any other portions of BellSouth's conduit system, or within 10 feet of any open manhole opening. This includes, but is not limited to, such tools as electric drills and hammers, meggers, breakdown sets, induction sets, and the like.
- 3.7 Opening of Manholes. The following requirements apply to the opening of BellSouth's manholes and the authority of BellSouth personnel present when work on Licensee's behalf is being performed within or in the vicinity of BellSouth's conduit system.
- 3.7.1 BellSouth's manholes shall be opened only as permitted by BellSouth's authorized employees or agents, which permission shall not be unreasonably denied or delayed.
- 3.7.2 Licensee shall notify BellSouth forty-eight (48) hours in advance of any routine work operation requiring entry into any of BellSouth's manholes.
- 3.7.3 Licensee shall be responsible for obtaining any necessary authorization from appropriate authorities to open manholes for conduit work operations therein.
- 3.7.4 BellSouth's authorized employee or agent shall not direct or control the conduct of Licensee's work at the work site. The presence of BellSouth's authorized employee or agent at the work site shall not relieve Licensee or personnel performing work on Licensee's behalf of their responsibility to conduct all work operations within BellSouth's conduit system in a safe and workmanlike manner.
- 3.7.5 Although BellSouth's authorized employee or agent shall not direct or control the conduct of Licensee's work at the work site, BellSouth's employee or agent shall have the authority to suspend Licensee's work operations within BellSouth's conduit system if, in the reasonable discretion of such BellSouth employee or agent, it appears that any hazardous conditions arise or any unsafe practices are being followed by Licensee or personnel performing work on Licensee's behalf.
- 3.8 OSHA Compliance: Notice to BellSouth of Unsafe Conditions. Licensee agrees that:
- 3.8.1 Its facilities shall be constructed, placed, maintained, repaired, and removed in accordance with the Occupational Safety and Health Act (OSHA) and all rules and regulations promulgated thereunder;

- 3.8.2 All persons acting on Licensee's behalf, including but not limited to Licensee's employees, agents, contractors, and subcontractors shall, when working on or within BellSouth's poles or conduit system, comply with OSHA and all rules and regulations thereunder;
- 3.8.3 Licensee shall establish appropriate procedures and controls to assure compliance with all requirements of this section; and
- 3.8.4 Licensee (and any person acting on Licensee's behalf) may report unsafe conditions on, in or in the vicinity of BellSouth's poles or conduit system to BellSouth.
- 3.9 Compliance with Environmental Laws and Regulations. Licensee acknowledges that, from time to time, environmental contaminants may enter BellSouth's conduit system and accumulate in manholes or other conduit facilities and that certain conduits (transite) are constructed with asbestos-containing materials. If BellSouth has knowledge of the presence of such contaminants in a conduit for which Licensee has applied for or holds a license, BellSouth will promptly notify Licensee of such fact.
- Notwithstanding any of BellSouth's notification requirements in this Attachment, Licensee acknowledges that some of BellSouth's conduit is fabricated from asbestos-containing materials. Such conduit is generally marked with a designation of "C Fiber Cement Conduit," "Transite," or "Johns-Manville." Until proven otherwise, Licensee will presume that all conduit not fabricated of plastic, tile, or wood is asbestos-containing and will handle it pursuant to all applicable regulations relating to worker safety and protection of the environment. BellSouth makes no representations to Licensee or personnel performing work on Licensee's behalf that BellSouth's conduit system or any specific portions thereof will be free from environmental contaminants at any particular time. The acknowledgments and representations set forth in the two preceding sentences are not intended to relieve BellSouth of any liability which it would otherwise have under applicable law for the presence of environmental contaminants in its conduit facilities. Licensee agrees to comply with the following provisions relating to compliance with environmental laws and regulations:
- 3.9.1 Licensee's facilities shall be constructed, placed, maintained, repaired, and removed in accordance with all applicable federal, state, and local environmental statutes, ordinances, rules, regulations, and other laws, including but not limited to the Resource Conservation and Recovery Act (42 U.S.C. §§ 9601 et. seq.), the Toxic Substance Control Act (15 U.S.C. §§ 2601-2629), the Clean Water Act (33 U.S.C. §§ 1251 et. seq.), and the Safe Drinking Water Act (42 U.S.C. §§ 300f-300j).

- 3.9.2 All persons acting on Licensee's behalf, including but not limited to Licensee's employees, agents, contractors, and subcontractors, shall, when working on, within or in the vicinity of BellSouth's poles or conduit system, comply with all applicable federal, state, and local environmental laws, including but not limited to all environmental statutes, ordinances, rules, and regulations.
- 3.9.3 Licensee shall establish appropriate procedures and controls to assure compliance with all requirements of this section. BellSouth will be afforded a reasonable opportunity to review such procedures and controls and provide comments that will be reasonably considered in advance of their implementation. Review and comment by BellSouth pursuant to this section will be provided in a timely manner.
- 3.9.4 Licensee and all personnel performing work on Licensee's behalf shall comply with such standards and practices as BellSouth and Licensee may from time to time mutually agree to adopt to comply with environmental laws and regulations including, without limitation, BellSouth Practice Sec. 620-145-011BT, "Manhole Contaminants, Water, Sediment or Debris Removal and Reporting Procedures". Pursuant to this practice, neither Licensee nor BellSouth nor personnel performing work on either party's behalf shall discharge water or any other substance from any BellSouth manhole or other conduit facility onto public or private property, including any storm water drainage system, without first testing such water or substance for contaminants in accordance with mutually agreed standards and practices and determining that such discharge would not violate any environmental law, create any environmental risk or hazard, or damage the property of any person. Proper handling and disposal of any waste material from a BellSouth manhole by Licensee or its contractor shall be the responsibility of Licensee. No such waste material shall be deposited on BellSouth premises for storage or disposal.
- 3.10 Compliance with Other Governmental Requirements. Licensee agrees that its facilities attached to BellSouth's facilities shall be constructed, placed, maintained, and removed in accordance with the ordinances, rules, and regulations of any governing body having jurisdiction of the subject matter. Licensee shall comply with all statutes, ordinances, rules, regulations and other laws requiring the marking and lighting of aerial wires, cables and other structures to ensure that such wires, cables and structures are not a hazard to aeronautical navigation. Licensee shall establish appropriate procedures and controls to assure such compliance by all persons acting on Licensee's behalf, including but not limited to, Licensee's employees, agents, contractors, and subcontractors.